



## CITY COUNCIL STAFF REPORT

**MEETING DATE: November 5, 2003**

### **UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)**

#### **RECOMMENDED ACTION(S):**

1. Review Proposed Amendments
2. Accept Public Testimony
3. Adopt Resolution Approving Negative Declaration
4. Adopt Resolution Calling for a Special Municipal Election on the March 2, 2004 Ballot
5. Adopt Resolution Requesting County Consolidation of Elections
6. Adopt Resolution Setting Priorities for Written Arguments and Directing the City Attorney to Prepare an Impartial Analysis

**Agenda Item # 25**

**Prepared By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** This item was considered by the City Council at its meeting of October 1, 2003 and continued to this date. The item consists of an update and extension of Measure P to the year 2020. A summary of the proposed amendments is attached to this memo as Attachment 1. A summary of the City Council's and Planning Commission's review of the draft amendments in April of this year and the disposition of the comments offered by both bodies is attached to this memo as Attachment 2.

At the October 1<sup>st</sup> meeting, Council members discussed a number of aspects of the proposed amendments and specifically requested the following:

1. modification of the amendments to provide for City Council consideration of appeals to project scoring before the Planning Commission distributes the available allotment,
2. modification of the amendments for consistent use of the term "allotment" or "allocation", and
3. calculation of the growth rate allowed by the proposed amendments.

Staff has prepared amendments to the initiative to address the Council's concerns regarding appeals of project scoring and the distribution of allotments. These amendments, which modify Section 18.78.125 B & C of the initiative, are included in Attachment 3 and shown in italicized type. The amendments would allow any project applicant to appeal to the Council the Planning Commission's scoring and/or assignment of allotment to a project. If these amendments are incorporated into the initiative, a policy providing guidance for their implementation including the standards for evaluation and appeals processes should be adopted. The Council should be aware that adoption of these amendments may promote multiple appeals, even appeals from applicants who are satisfied with their project scoring and allocation.

As requested, the amendments have been modified to use the term "allotment", wherever possible.

Using the January 1, 2003 population estimate of 34,918 as base year, the annual growth rate to the year 2020 would be approximately 1.9 percent. This growth rate would allow between 230 and 250 homes to be constructed per year.

A Negative Declaration is proposed for adoption for this project. Public notice of the proposed Negative Declaration was provided, as required by law. No comments were received regarding the document.

Attached to this memo as Attachment 4 is a listing of some of the benefits which have accrued to the City as a result of implementation of Measure P and which will continue to accrue with the update and extension of the Measure.

**FISCAL IMPACT:** \$65,000 has been budgeted for this project. No budget adjustment is required.

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, APPROVING A NEGATIVE DECLARATION FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) UPDATE**

**WHEREAS**, Measure P, an initiative measure passed by the voters of Morgan Hill in 1990, governs the City's Residential Development Control System ("RDCS"), and will expire in 2010 unless extended by a vote of the citizens of Morgan Hill; and,

**WHEREAS**, since July 2002, the City Council, Planning Commission, and specially-appointed Measure P Update Committee have been involved in a comprehensive evaluation of Measure P; and,

**WHEREAS**, the Update Committee developed numerous recommendations, which were considered in public hearings before the Planning Commission and the City Council, and at a community workshop; and,

**WHEREAS**, following the receipt of public comments and upon the direction of the City Council, "An Ordinance of the City of Morgan Hill Extending the City's Residential Development Control System through the year 2020, and Amending Provisions of the General Plan and Article I of Chapter 18.78 of the Municipal Code to Update and Extend the Residential Development Control System" ("RDCS Update") was drafted; and,

**WHEREAS**, the RDCS Update was reviewed by the Planning Commission on September 9, 2003, and September 23, 2003, and submitted to the City Council for further review and action at public meetings on October 1, 2003, and October 15, 2003; and,

**WHEREAS**, concurrently with preparation of the RDCS Update, the City prepared an Expanded Initial Study under the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 *et seq.*, to analyze the potential environmental impacts of the contemplated action by the City in placing before the voters the RDCS Update, and the RDCS Update itself; and,

**WHEREAS**, as a result of that Initial Study City Staff concluded that there would be no significant adverse impacts and that a Negative Declaration would be appropriate under CEQA; and,

**WHEREAS**, a Public Notice of Availability of a Proposed Negative Declaration was released on September 12, 2003, for a public comment period running through October 13, 2003, and no comments were received; and,

**WHEREAS**, on September 23, 2003, at a public hearing on the Measure P update, the Planning Commission considered the proposed Negative Declaration and recommended its approval by the City Council; and,

**WHEREAS**, the City Council has reviewed the complete record before it, including the staff reports and attachments, the proposed Negative Declaration and the Expanded Initial Study; and,

**WHEREAS**, copies of the Negative Declaration, Expanded Initial Study, and related public notice are attached to this Resolution as Attachment A.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The proposed Negative Declaration complies with the requirements of CEQA.

**SECTION 2.** The proposed Negative Declaration reflects the independent judgment and analysis of the City of Morgan Hill and the City Council.

**SECTION 3.** The RDCS Update will, if adopted by the voters, refine and extend the provisions of the City's current residential development control system (RDCS), which would otherwise expire in 2010. The RDCS Update will make certain adjustments to address specific difficulties in the implementation of the RDCS allotment system. In addition, the RDCS Update will enable the City to continue implementing the RDCS through 2020.

**SECTION 4.** The City's 2001 General Plan established a population goal of 48,000 persons in the year 2020. The RDCS Update will implement the 2001 General Plan by assuring that through 2020 the level of residential development approvals in the City will be consistent with that population goal. The RDCS Update will, if passed, ensure that the City's residential development approvals are consistent with the level of growth that has been analyzed fully in the Master Environmental Impact Report for the 2001 General Plan. The RDCS Update will have no additional significant effect on the environment that was not identified and addressed in the Master EIR for the General Plan.

**SECTION 5.** The RDCS Update does not specifically authorize development of any specific development project. Future proposals for development projects will be subject to the requirements of environmental review under applicable laws, and if, required, appropriate mitigation measures.

**SECTION 6.** Based on the complete record before it, and upon the foregoing, the City Council concludes and finds, under CEQA, that its action in placing the RDCS Update on the ballot will have no significant environmental impacts, and that there is no substantial evidence that the RDCS Update if passed by the voters, or the action of the City Council placing the RDCS Update on the ballot, will have a significant effect on the environment, and the City Council therefore approves the proposed Negative Declaration.

**PASSED AND ADOPTED** by the City Council of the City of Morgan Hill at a regular meeting held on the 5<sup>th</sup> day of November, 2003 by the following vote:

|                 |                         |
|-----------------|-------------------------|
| <b>AYES:</b>    | <b>COUNCIL MEMBERS:</b> |
| <b>NOES:</b>    | <b>COUNCIL MEMBERS:</b> |
| <b>ABSTAIN:</b> | <b>COUNCIL MEMBERS:</b> |
| <b>ABSENT:</b>  | <b>COUNCIL MEMBERS:</b> |

**ATTEST:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**🔒 CERTIFICATION 🔒**

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO CONSOLIDATE ELECTION AND RENDER SPECIFIED SERVICES TO THE CITY OF MORGAN HILL RELATING TO THE CONDUCT OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, MARCH 2, 2004.**

**WHEREAS**, the City Council of the City of Morgan Hill called a Special Municipal Election to be held on Tuesday, March 2, 2004, for the purpose of submitting to the voters of a Ballot Measure to update and extend Measure P; and

**WHEREAS**, in the course of conduct of the Election, it is necessary for the City to request services of the County;

#### **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**SECTION 1.** That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a Special Municipal Election to be held on Tuesday, March 2, 2004 for the purpose of submitting to the voters a ballot measure.

**SECTION 2.** The City of Morgan Hill further requests the services of the Board of Supervisors of Santa Clara County and the Registrar of Voters to conduct said Special Election and to consolidate such election. The Registrar of Voters is requested to provide all necessary election services and to canvass the returns of the General Municipal Election.

**SECTION 3.** That the Board of Supervisors is requested to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

**SECTION 4.** That the City of Morgan Hill recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any such reasonable costs.

**SECTION 5.** That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of Santa Clara.

**SECTION 7.** That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED AND ADOPTED** by the City Council of the City of Morgan Hill at a regular meeting held on the 5<sup>th</sup> day of November, 2003 by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**🦋 CERTIFICATION 🦋**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## ATTACHMENT A

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF MORGAN HILL EXTENDING THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM THROUGH THE YEAR 2020, AND AMENDING PROVISIONS OF THE GENERAL PLAN AND ARTICLE I OF CHAPTER 18.78 OF THE MUNICIPAL CODE TO UPDATE AND EXTEND THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM

The people of the City of Morgan Hill do ordain as follows:

### **Initiative Measure Section 1: Findings and Purposes**

In approving this initiative measure the voters of the City of Morgan Hill make the following findings:

- A. Since 1977 the City of Morgan Hill ("the City") has had in place a Residential Development Control System ("RDSCS"), which sets a target future population for the City and provides a method for evaluating proposed residential developments and issuing a limited number of development allotments each year. The RDSCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. The system was first enacted by the voters through Measure E in 1977, and subsequently refined and extended through Measure P in 1990. By its terms Measure P shall remain in effect until fiscal year 2009/10, and can be amended only by a vote of the people. By this RDSCS Update, the voters of the City are extending and updating Measure P.
- B. Under Measure P, the RDSCS has fostered balanced growth in the City. The City has achieved a manageable level of development, and has encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure. The RDSCS has helped the City to preserve a diversity of housing opportunities, including a good stock of high-quality affordable housing, for its residents. It has helped to maintain the vitality of the City while preserving its open space resources. Accordingly, the people by this initiative measure are extending, through fiscal year 2019/20, the core provisions of the City's General Plan and zoning ordinances relating to the RDSCS.
- C. Measure P established a population ceiling of 38,800 for the City in the year 2010. The City's current population is approximately 35,000. In 2001, the City updated its General Plan and incorporated in it an updated population projection of 48,000 for the year 2020. This RDSCS Update will incorporate the updated 2020 population projection and adjust the allotment provisions of the RDSCS accordingly.
- D. The Leroy F. Greene School Facilities Act of 1998 provides for the exclusive means of considering and mitigating impacts of development projects on school facilities and

limits the ability of a city to deny approval of a project on the basis that school facilities are inadequate. Conforming amendments to the RDCS are therefore appropriate.

- E. In reviewing the implementation of the numerical formulas and the scoring system of the RDCS, the City has concluded that, while on the whole the system works well and should be maintained and extended, certain aspects of the RDCS need to be further refined to provide a more consistent number of allotments each year and avoid extreme variations in the amount of residential development that takes place year to year, and otherwise to simplify the administration of the system.
- F. Measure P's requirement that one-third of all residential development allotments be awarded to projects on the west side of Monterey Road and on-third on the east side of Monterey Road, with the remaining third anywhere in the City, has resulted in undesirable effects including projects on the west side of Monterey Road being approved with lower point scores than projects on the east side. This RDCS Update would eliminate the required geographical distribution and instead adopt provisions encouraging new residential development in the downtown and near the central portion of the City.
- G. The City adopted a new Downtown Plan in 2003. A major strategy of the Downtown Plan is to encourage an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, to provide market support for new businesses, and to establish a viable neighborhood in this central area of the City. This RDCS Update will require the reservation of a certain number of allotments for projects in the downtown area through 2010. Reserving allotments for residential projects in the area covered by the Downtown Plan will help to ensure that this strategy is successfully implemented.
- H. Should the City in the future establish an Urban Limit Line or Greenbelt, no residential development or expansion of the Urban Growth Boundary or Urban Service Area could be approved pursuant to this RDCS Update that is inconsistent with such Urban Limit Line or Greenbelt.
- I. Based on the foregoing, the voters hereby enact the provisions set forth in sections 2, 3, and 4 below, amending the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code, and extending the terms of Measure P, as amended, through fiscal year 2019/20.
- J. Attached to this initiative measure as Exhibit A is a map based on the Morgan Hill General Plan Land Use Diagram. On Exhibit A, the lands within the City designated as Open Space and retained as open space pursuant to Measure P and this initiative are highlighted, and the Urban Service Area referred to in this initiative is also illustrated. The map is for reference purposes and is not being adopted or amended by this initiative measure.

## **Initiative Measure Section 2: General Plan Amendment**



The City of Morgan Hill General Plan Community Development element contains the core provisions governing “Residential Development Control,” as adopted by the voters of the City when they passed Measure P in November 1990. The people now wish to update and extend the provisions of the General Plan enacted by them in Measure P, and accordingly adopt the General Plan amendments set forth below. Changes to the text approved by the voters in 1990 are shown by strike-out text for deletions, and underscored text for additions. The “Residential Development Control” provisions appear at pages 25-28 of the July 2001 Morgan Hill General Plan. The provisions of the General Plan as amended by this initiative shall remain in effect through fiscal year 2019/20.

## **Residential Development Control**

The following provisions, enacted by voter initiative Measure P in 1990 and refined and extended by vote of the people of the City in 2004, shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year ~~2009/2010~~ 2019/20.

### **A. Requirement of Development Allotments for All Residential Development.**

For the years to and including fiscal year 2019/20~~2009/2010~~, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefor in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDSCS) set out in the Morgan Hill Municipal Code, ~~except one dwelling unit developments which are not part of a current, planned or potentially larger subdivision, and except for~~ secondary dwelling units (“granny units”) and for a single dwelling unit, on the following conditions: If one unit is proposed on a parcel of sufficient size to accommodate additional units, it may be permitted without an allotment only if a deed restriction is placed upon the parcel which requires allotments to be obtained for any additional dwelling units on that parcel. Furthermore, if more than one contiguous parcel is proposed for development by the same individual or entity under the single dwelling unit exemption on each parcel, Residential Planned Development Zoning shall be required for such development.

The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

### **B. Number of Development Allotments.**

The population ceiling for the City as of January 1, 2020 ~~2010~~ is forty-eight thousand (48,000) ~~38,800~~. This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. ~~The increased burden on City services imposed by development outside the present City limits adversely affects the City's ability to provide services to developments within the present City limits.~~ However, if any of the following existing County subdivisions, which are already within the City's Urban Growth Boundary (“Existing County Subdivisions”), are annexed into the City, the population within them shall

not count against the 48,000 person population limit: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III (at the southwest corner of Hill Rd. and Diana Ave.).

The number of allotments shall be determined biennially, using the California Department of Finance's most recently determined figures for the persons per household and total population of the City of Morgan Hill. The State's estimate will be adjusted for any relevant housing backlog not included in its population estimate, any Existing County Subdivision (as defined under the prior paragraph) that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between the population estimate date and 2020. This gross annual allotment is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year. The number of residential development allotments for any fiscal year shall be limited to a number equal to the desired annual population increase for that fiscal year divided by the occupancy level per dwelling unit. For purposes of this determination, the annual desired population increase shall be equal to the difference between 38,800 and the population of the City of Morgan Hill on January 1st of the previous fiscal year, divided by the number of years remaining between the previous fiscal year and fiscal year 2009/2010. The population of the City of Morgan Hill on January 1st of the previous fiscal year shall be equal to the most recent population determination by the California State Department of Finance. The occupancy level per dwelling unit, for purposes of calculation of annual allocations, shall be determined by the State of California, Department of Finance estimate for the City of Morgan Hill.

The number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined each year by the City Council, provided that no less than thirty-three percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. ~~No less than one third of the total annual allotments shall be awarded to developments to the east of Monterey Road and no less than one third of the total annual allotments shall be awarded to developments to the west of Monterey Road, with the remainder distributed on the basis of points received and without regard to the east/west distribution.~~ The City Council may, if it chooses, further divide the allotments according to geography, price, development size, phasing (including the number of units and timing of allotments required to complete a project), and similar criteria as deemed necessary to provide for the general welfare.

For the competitions for allotments in fiscal years 2006-07 through 2009-10, the City Council shall reserve a certain number of allotments for projects in the Downtown Area. The number of allotments allocated, and the geographic limits of the Downtown Area for this purpose, shall be determined by the Council. The Council may amend the number of the reserved allotments and geographic limits of Downtown for this purpose, and may continue to reserve an appropriate number of allotments to Downtown area projects after the 2009-10 fiscal year.

The City Council may, in any year, reserve an appropriate number of allotments per year to vertical mixed-use projects, which are not restricted to the Downtown Area.

### **C. Development Allotment Applications and Evaluations.**

~~The annual~~ Development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals in an annual or biennial competition. ~~for each year.~~ The point scale used shall take into account the impact of the proposed development on the following public facilities and services: ~~schools,~~ water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development ~~allocations~~ allotments, the City Council shall comply with Government Code Sections 66000 et seq. and other relevant provisions of the state Planning and Zoning Law.

### **D. Emergency situations.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of ~~emergency overcrowding of the schools,~~ mandatory water rationing, sewage system operating at 95 % capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

## **E. Open Space Conversions.**

No development ~~allocations~~ allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

With respect to development ~~allocations~~ allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through ~~March 1, 1999~~ August 2003 are hereby reaffirmed and readopted through ~~FY 2009/10~~ fiscal year 2019/20. This provision shall not prevent the City Council from designating additional lands as open space.

## **F. Urban Service Area Restrictions.**

The City of Morgan Hill shall neither apply to LAFCO for, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land ~~either to the east of Monterey Road or to the west of Monterey Road~~ within the existing Urban Service Area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. ~~for the land on that side of Monterey Road.~~ The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition of land to the Urban Service Area ~~of land only on the side of Monterey Road having the insufficiency, and only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition on that side of Monterey Road.~~

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable in-fill. Desirable in-fill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary, (as determined by a perpendicular line drawn from the side of the parcel to the City boundary), and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban

Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden City services, and that the expansion would beneficially affect the general welfare of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those areas that promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in paragraph B, "Number of Development Allotments," of the Residential Development Control provisions of the General Plan.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox Act or other state statute or by any Court judgment.

~~Because of the shortage of services and resources facing the City of Morgan Hill (e.g., water, sewer, schools, streets, fire and police protection), and in~~ In order to assure that ~~such City~~ services and resources are not unduly burdened, ~~further,~~ urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990, and the effective date of Measure P, December 8, 1990, ~~this initiative~~ and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than that is provided for in the Santa Clara County General Plan as of March 1, 1990.

## **G. Urban Services Extensions.**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that: 1) Morgan Hill has entered into a

mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by City facilities on County Land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Initiative Measure Section 3: Amendments to Chapter 18.78 of the Morgan Hill Municipal Code**

The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Article I of Chapter 18.78 contains the core provisions governing the RCDS as adopted by the voters of the City of Morgan Hill when they passed Measure P in November 1990. The people of Morgan Hill now wish to update and extend the provisions of Article I of Chapter 18.78, Parts 2, 3 and 4, and accordingly adopt the Code amendments set forth below.

Rather than revise the original findings supporting adoption of Measure P in 1990 and set forth in Part 1 of Article I, the people have made additional and updated findings, which are set forth in Section 1 of the 2004 ballot measure refining and extending the RDCS.

Changes from the text of the Morgan Hill Municipal Code are shown in the following sections amending Article I, Parts 2, 3, and 4, by strike-out text for deletions, and underscored text for additions. These provisions of Chapter 18.78 as amended shall remain in effect through fiscal year 2019/20.

#### **Article I**

#### **Part 2. Residential Development Control**

##### **18.78.020 Development allotments--Required when.**

For the years to and including fiscal year ~~2009/2010~~ 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the city unless a development allotment has been obtained therefor in accordance with the provisions of the general plan and the residential development control system (RDCS) set out in Parts 2 and 3 of this article, ~~except one-dwelling unit developments which are not part of a current, planned or potentially larger subdivision, and except secondary dwelling units ("granny units").~~ and one-dwelling-unit developments as provided for below. One-dwelling-unit developments may be permitted without a development allotment, providing the following requirements are met:

A. If the parcel upon which the one-unit-development is proposed is of sufficient size to accommodate additional units, a deed restriction shall be placed on the parcel which requires allotments to be obtained for any additional unit on the parcel.

B. If more than one contiguous parcel is proposed for development by the same individual or entity, or entities with an identity of interest, under the single dwelling unit

exemption on each parcel, Residential Planned Development zoning shall be required for such development.

The residential development control provisions of Part 2 of this article shall apply to all types of residential development in the city, including single-family (which includes mobile homes) and multifamily housing.

#### **18.78.030 Development allotments--Determination and distribution.**

A. The population ceiling for the city as of January 1, ~~2020~~2010, is forty-eight thousand persons ~~thirty-eight thousand eight hundred~~. This ceiling shall not be increased, regardless of whether additional lands are annexed to the City or its urban service area. ~~The increased burden on city services imposed by development outside the present city limits adversely affects the city's ability to provide services to developments within the present city limits.~~

If any of the following existing County subdivisions ("Existing County Subdivisions") are annexed into the City, the population within them shall not count against the 48,000 person limit, as set forth below in section 18.78.030B: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III. The population of these Existing County Subdivisions shall be determined by multiplying the number of homes in each area by the average number of persons per household as determined by the most recent State Department of Finance estimates. Prior to the enactment of Measure P, Holiday Lake Estates Unit 1 and Casalegno's Subdivision (Casa Lane) were provided with City water service. The El Dorado III subdivision, at the southwest corner of Hill Road and Diana Ave., was developed in the County, and provided with sewer and water service, in order to eliminate a significant County health problem. These Existing County Subdivisions are all within Morgan Hill's UGB and were at least 95 percent developed as of August 2003.

B. The number of allotments shall be determined biennially using the California Department of Finance's most recently determined persons per household figures and population for the City of Morgan Hill.

The California Department of Finance's population estimate will be adjusted for any relevant housing backlog not included in its population estimate, the population of any Existing County Subdivision enumerated in paragraph 18.78.030A that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between that population estimate date and 2020. This gross annual allotment number is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The biennial allotment calculation applies to each fiscal year after the fiscal year in which it is computed. For example, the Spring 2004 computation will be used to set the number of allotments for the competition to be held for fiscal years 2006/07 and 2007-08, as well as to make any positive supplemental adjustments for the previously awarded fiscal years 2004/05 and 2005/06, for projects that competed for 2004/05 and 2005/06 allotments.

~~The number of residential development allotments for any fiscal year shall be limited to a number equal to the desired annual population increase for that fiscal year divided by the occupancy level per dwelling unit. For purposes of this determination, the annual desired population increase shall be equal to the difference between twenty-eight thousand eight hundred and the population of the city on January 1st of the previous fiscal year, divided by the number of years remaining between the previous fiscal year and fiscal year 2009/2010. The population of the city on January 1st of the previous fiscal year shall be equal to the most recent population determination by the California State Department of Finance. The occupancy level per dwelling unit, for purposes of calculation of annual allocations, shall be determined by the state's Department of Finance estimate for the city.~~

C. The number of development allotments shall be divided between conventional single-family dwellings, mobile homes and multiple-family dwellings in a manner determined ~~each~~ year by the city council; provided, that no less than thirty-three percent of all allotments shall be awarded to single-family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. ~~No less than one-third of the total annual allotments shall be awarded to developments to the east of Monterey Road and no less than one-third of the total annual allotments shall be awarded to developments to the west of Monterey Road, with the remainder distributed on the basis of points received and without regard to the east/west distribution.~~ The city council may, if it chooses, further divide the allotments according to geography, price, development size, phasing, including the number of units and timing of allotments required to complete a project, and similar criteria as deemed necessary to provide for the general welfare.

D. For the competitions for allotments in fiscal years 2006-07 through 2009-2010, the City Council shall reserve a certain number of allotments for projects in the Downtown area. The number of allotments allocated, and the geographic limits of the Downtown area for this purpose, shall be determined by the City Council and may be amended, as necessary, to reflect changes in circumstances and needs. The Council may continue to reserve a certain number of allotments for projects in the Downtown Area after the 2009/10 fiscal year.

#### **18.78.040 Development allotments--Applications and evaluations.**

A. ~~The annual d~~Development allotments shall be allocated to proposed developments in accordance with a residential development control system set out in Part 3 of this article. This system shall provide for awards of development allotments based on the number of points scored for all development proposals ~~for each year within a competition.~~ The City may conduct 1-year or 2-year competitions. The City may allocate a portion of the total allotment granted to an applicant as available in the subsequent year (i.e., in the event of a 1-year competition, a portion of the allotment is made available in the second year, and in the event of a 2-year competition, a portion is made available in the third year). The point scale used shall take into account the impact of the proposed development on the following public facilities and services: schools, water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.



B. Proposed developments shall be awarded points for provision of schools, related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, diversity of housing types, and for quality of architectural design and site design.

C. Small residential developments provide special benefits to the city by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in-fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the residential development control system shall be designed to provide for small development through appropriate means selected by the city council, such as a separate small project competition and a more streamlined and less costly process.

D. In implementing the provisions of the residential development control system and making awards of development allotments, ~~allocations~~ the city council shall comply with Government Code Sections 66000 et seq.

E. Up to 10 allotments per year may be set aside for vertical mixed-use projects. These reserved allotments may be awarded to projects that receive at least a minimum passing score through a competitive process or on a first-come, first-served basis.

The City Council may establish higher minimum passing scores for mixed-use projects and/or consistency with the guidelines for development contained in the City's Downtown Plan. The City Council may allow for a maximum of 20 unused mixed-use allotments to be carried over from year to year, if unused in prior years, for a maximum of 30 units potentially available for distribution in one year under this set-aside. Mixed-use projects eligible for allotments under this set-aside shall be no larger than 15 units. A single development project shall be eligible to receive allotments under this set-aside only once.

#### **18.78.050 Emergency situations--Restrictions on development.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the city council pursuant to provisions of this code. The declaration of an emergency or severe impaction situation may be based on determinations of ~~emergency overcrowding of the schools~~, mandatory water rationing, sewage system operating at ninety-five percent capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

#### **18.78.060 Open space conversions.**

A. No development ~~allocations~~ allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under Part 2 of this article shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

B. With respect to development ~~allocations~~ allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

C. The lands within the city that are designated "open space" on the city's general plan land use/circulation elements map, as amended through ~~March 1, 1990~~ August 2003, are reaffirmed and readopted through fiscal year ~~2009/2010~~ 2019/20. This provision shall not prevent the city council from designating additional lands as open space.

#### **18.78.070 Urban service area restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land ~~either to the east of Monterey Road or to the west of Monterey Road~~ within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. ~~for the land on that side of Monterey Road.~~ The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area ~~of land only on the side of Monterey Road having the insufficiency, and~~ only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition ~~on that side of Monterey Road.~~

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable in-fill. "Desirable in-fill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services, and that the expansion would beneficially affect the general welfare of the citizens of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date the area is added to the Urban Services Area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the City's findings are based, or convey the land needed for the public facilities on which the findings are based, must be secured prior to official action adding the area to the Urban Services Area, through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the Existing County Subdivisions enumerated in section 18.78.030A may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these Existing County Subdivisions may be added to the City Urban Service Area and annexed into the City without otherwise meeting the test for desirable infill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox Act or other state statute or by any court judgment.

~~D. Because of the shortage of services and resources facing the city (e.g., water, sewer, schools, streets, fire and police protection), and in~~ In order to assure that ~~City~~ such services and resources are not unduly burdened ~~further~~, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, ~~the ordinance codified in this chapter~~ and not considered in-fill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that is provided for in the Santa Clara County general plan as of March 1, 1990.

#### **18.78.080 Urban services extensions.**

The city shall grant no new extensions of urban services for residences beyond its urban service area except in the event that:

A. Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by city facilities on county land; or

B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Part 3. Residential Development Control System**

#### **18.78.090 Application--Procedure and contents--Fees.**

A. An application for a development allotment shall be made to the city planning division ~~department~~ on a form provided by the city. Such application shall contain the following information and be accompanied by the following documents:

1. Site utilization map including:
  - a. Vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,
  - b. Site use layout map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. The site use layout map is of major importance; the vicinity map may be shown as a small inset map;
2. Site development plan including lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with city street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways;
3. Preliminary architectural plans including typical architectural elevations, types and numbers of dwelling units, proposed color of buildings;
4. Preliminary grading plans including a general indication of type, extent and timing of grading;
5. Narrative description of p~~P~~reliminary landscape plans including general indications of planting;
6. Housing marketability and price distribution including expected ranges of rental amounts or sales prices, low-income and moderate-income housing to be provided, and applicability to housing assistance plan, if any;
7. Statement regarding how the proposed development will comply with state law requirements regarding the mitigation of impacts of the development on school facilities. ~~Schools and other public facilities including needed schools, permanent or relocatable, or school impact~~ action mitigation measure to be provided. Description of other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities;
8. Development schedule including proposed schedule of development including phasing;
9. ~~Financial information including financial information sufficient to enable the city to determine if the project has a reasonable chance of being undertaken and completed if a development allotment is awarded;~~
10. Such other information as may be required by the planning manager ~~director~~.

B. Each application shall be accompanied by a reasonable fee set by the city council based on the cost to the city of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc., and shall not be returned in the event that no development allotment is awarded.

C. An applicant may file only one application for any given property in any ~~given year~~ competition.

D. An application for a development allotment shall be filed with the city planning division ~~community development department~~ on a date determined by the planning manager, which shall be no later than twenty-one months preceding the fiscal year during which the allotments must be utilized. ~~November 1st of the fiscal year preceding the award of allotment.~~

#### **18.78.100 Application--Evaluation by planning officer.**

A. The planning officer (hereinafter referred to as PO) shall review each application and determine whether or not the proposed development conforms to the city's general plan. If the PO determines that a proposed development does not conform to the general plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council by filing a written notice of appeal with the city clerk, who shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans, reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans. The decision of the council shall be final and conclusive.

#### **18.78.110 Evaluation procedures--Generally.**

Proposed developments found by the PO or city council to conform to the general plan shall be evaluated by the PO and awarded points as set forth in Section 18.78.115. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections 18.78.115 and 18.78.120. The PO shall submit his evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote.

#### **18.78.115 Evaluation procedures--Impact on existing facilities--Point system.**

A. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

B. The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from zero to two points for each of the following:

~~1. The capacity of the appropriate school to absorb the children expected to inhabit a proposed development without necessitating or adding to double sessions or other unusual scheduling or site or classroom overcrowding (written evaluation of the MHUSD);~~

~~1.~~ 2 The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide (comments of the city director of public works);

~~23.~~ 3 The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the city director of public works);

~~34.~~ 4 The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the Santa Clara Valley Water District and the city director of public works);

~~45.~~ 5 The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel (comments from the fire and police departments);

~~56.~~ 6 The ability and capacity of major street linkages to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level of service being no worse than ["D+"]-"C" level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer (comments from the appropriate department heads).

#### **18.78.120 Evaluation procedures--Design and amenity criteria.**

On quality of design and extent of contribution to public welfare and amenities, the PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

A. The provisions of school facilities and amenities, needed schoolrooms in the form of permanent or relocatable buildings or the provision of other mitigating measures as attested by agreement with the MHUSD, to the extent such consideration is not in conflict with state law. A minimum of one-third of the points in this category shall be reserved for criteria such as the development's impact on existing bus routes, or classroom or site overcrowding .....25 points;

B. The provision of public and/or private usable open space and, where applicable, greenbelts .....20 points;

C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than leapfrog development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors .....20 points;  
(For purposes of this section, “the central core” is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Ave. from Wright Ave. to Ciolino Ave. and by West Little Llagas Creek from Cioliono Ave. to Cosmo St; on the east by the railroad tracks from the easterly prolongation of Wright Ave. to Main Ave., by Butterfield Blvd. from Main Ave. To Dunne Ave., and by Church St. from Dunne Ave. to the easterly prolongation of Cosmo St.; on the north by Wright Ave. and its easterly prolongation to the railroad tracks; and on the south by Cosmo St. and its easterly prolongation to Church St.)

D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities ..... 10 points;

E. Provision of parks, foot or bicycle paths, equestrian trails or pathways . . 10 points;

F. The provision of units to meet the city's need for low-income and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity ..... 15 points;

G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan ..... 15 points;

H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height ..... 15 points;

I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations ..... 15 points;

J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy..... 15 points;

K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures .....510 points;

L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings ..... 10 points;

M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features .....1510 points;

N. The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concepts of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed-use, infill, and maximization of use of existing infrastructure. .... 10 points.

#### **18.78.125 Award and issuance of allotments.**

A. The PO shall notify each applicant of his evaluation under Sections 18.78.110 through 18.78.120. Such notice shall be given in writing within seven days after the evaluation has been approved by the planning commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time, the PO shall notify in writing the MHUSD

and all other city departments and public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 of the result of that evaluation.

B. Proposed developments which have not been assigned a minimum of ~~nine~~ 7.5 points under Section 18.78.115 or a minimum of ~~one hundred twenty-five~~ one hundred sixty (160) points under Section 18.78.120 shall not be given a development allotment, except for Micro projects (as defined by the City Council) and projects which are 100% affordable, for which the minimum passing score shall be one hundred fifty (150) points. Any applicant whose proposed development has not been given the required number of points under this section may appeal its scoring the matter of allotment evaluation to the city council as provided in Section 18.78.130.

C. Subject to the limitations set forth in this subsection and subsection F of this section, proposed developments which have received a minimum of 7.5 ~~nine~~ points under Section 18.78.115 and a minimum of ~~one hundred sixty-two~~ one hundred fifty points under Section 18.78.120 (or, for qualifying projects, one hundred fifty points) may be awarded an allotment. ~~for the following fiscal year~~ Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by planning commission's determination or by city council's determination on appeal) exceed the numerical limits established by the city council by housing-type-competition category (micro, small, affordable, large market rate), development allotments for which the council-established numerical limit has thus been exceeded shall be awarded to the highest scoring projects based on the basis of the number of points received under Section 18.78.120, starting with those proposed developments receiving the most evaluation points for the affected housing-type category and proceeding in order down the list until the numerical limit established by the council has been reached. A project may be awarded fewer than the total number of allotments requested by it, and the surplus allotments awarded to the next highest scoring development(s) if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan. ~~Where allotments are made on the basis of comparative standing on the list, a~~ Any applicant who has received the required minimum number of points, but who is not high enough on the list to receive a development allotment, may appeal its scoring the matter of allotment evaluation to the city council as provided in Section 18.78.130.

In the event that an applicant seeks a higher number of allotments than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one-year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

D. Allotments shall be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. ~~for the next fiscal year shall be issued by April 1st of the preceding year and shall be limited to those applicants whose evaluations under Sections 18.78.110 through 18.78.120 are completed at least thirty days prior to the date of the issuance of allotments and whose application or evaluation is not being appealed to city council either by the~~



~~applicant or by any other interested party at the time the allotments are issued.~~ Allotments shall be awarded for no more than three ~~two~~ fiscal years in a single competition.

E. Any applicant whose development evaluation has been completed and where any appeals, if applicable, have been resolved and who does not receive an allotment for the ~~fiscal year competition~~ will not be considered automatically for the subsequent competition, fiscal year, but must reapply under Section 18.78.090 for the next or subsequent fiscal year competition.

F. If a project receives an allotment in a competition for more than 50 percent of the units in the project but fewer than the total number of units needed to complete it, the additional units needed to complete it may be awarded to the project for the competition year immediately after that covered by the current competition. This additional allotment shall be considered a portion of the limited allotment for that future competition. The number of units awarded under this section for a future competition year shall be similar to the number of units awarded per year for the major portion of the project. If an applicant desires approval of residential units in a single residential development to be phased over more than one fiscal year, the applicant may apply to the city council for such approval. The city council may give such approval if it is demonstrated that the proposed project, if limited to one fiscal year, is not economically feasible because of the required off-site or other improvements required and other factors beyond the developer's control. The applicant shall be given the necessary additional allotments to complete the project in the next fiscal year; however, these additional allotments shall be considered a portion of the limited allotment for that next fiscal year.

G. To ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their ~~allocation allotment~~ and must reapply under the development allotment process outlined in Section 18.78.090 if development is still desired by the developer. An exception to the loss of ~~allocation allotment~~ may be granted by the city council if the cause for the lack of commencement was the city's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140, or extended delays in environmental reviews, ~~permit~~ delays not the result of developer inaction, or ~~allocation allotment~~ appeals processing.

For projects that include the sale of individual lots for custom development by individual purchasers, purchasers of the custom lots shall be given an additional 24 months to physically commence construction. If this extension proves insufficient, an applicant for a custom home may apply for an additional extension subject to the same rules and circumstances as outlined in this paragraph for other projects.

### **18.78.130 Appeal procedures.**

A. An applicant may appeal to the city council pursuant to subsections B or C of Section 18.78.125 by filing a written notice of appeal with the city clerk within fifteen ~~ten~~ days after the notice of evaluation has been mailed.

B. The MHUSD or other public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 may appeal to the city council the evaluation under Sections 18.78.115 and 18.78.120 within fifteen~~thirty~~ days after notice has been mailed as described in Section 18.78.125 (A).

C. Any citizen or group of citizens may appeal to city council the evaluation of any applicant by filing with the city clerk a petition signed by one hundred registered voters of the city within fifteen~~thirty~~ days after the notice of evaluation has been mailed to the applicant.

D. In the event an appeal is filed under subsections A, B or C of this section, the city clerk shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting at which time the council will hear the applicant or his representative and such other persons as may be able to assist the council in the determination of the matter on appeal. The council may affirm or modify, ~~the allotment evaluation~~ and its decision shall be final and conclusive.

#### **18.78.140 Emergency situations--When declared--Action and review by council.**

A. An emergency or severe impact situation shall be any one or more of the following:

1. A finding by the director of public works that the sewage facility usage level exceeds ninety-five percent of the capacity of the system;

2. Mandatory city water-rationing measures in effect;

3. ~~Schools in MHUSD on "double sessions," or the MHUSD~~ notifies the City Council has declared that conditions of an emergency overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs, pursuant to Government Code section 65971s. "Emergency overerowding" may be declared for one or more schools, based on criteria established by the MHUSD, including, but not limited to, a specified percent of student enrollment beyond a determined capacity of the affected schools;

4. ~~The MHUSD or other~~ Any public agency providing services essential to the public health and safety notifies city council in writing or by resolution that its ability to meet the public needs is severely impacted;

5. Any other endangerment to public health, safety or welfare which the city council determines to exist for the purposes of Part 3 of this article.

B. If any of these specified conditions exist, then the city council shall certify an emergency or severe impact situation.

C. In addition, any citizen or group of citizens may petition the city council for declaration of an imposition of an emergency or severe impact situation by filing with the city clerk a petition signed by ~~the greater of five hundred or four percent of the registered voters of the city.~~ The city council, at their next available regularly scheduled meeting, must then vote on a resolution of emergency or severe impact situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

D. In the event such an emergency or severe impact situation is certified, no building permit and no allotment shall be issued unless the city council first specifically finds that the building

permit or specific allotment ~~allocation~~ will not contribute additionally to the existing emergency or severe impactation situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

E. The PO shall review all certified emergency or severe impactation situations at least quarterly, and shall determine whether conditions warrant continuation of the emergency or severe impactation. The PO shall report his findings to the city council, and notice of such findings shall be placed on the city council agenda and published in a newspaper of general circulation. If the city council finds, based on the PO's report, that the certified emergency or severe impactation situation no longer exists, it shall decertify the emergency.

F. In implementing Part 3 of this article, the city council shall comply with the provisions of Government Code Sections 65858, 65972, 65996, and other applicable state law requirements. Where those provisions conflict with this article, the state statute shall prevail.

#### **18.78.150 Quarterly progress review--Failure to comply.**

A. The planning officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the planning ~~division~~department.

B. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the city staff and council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points awarded for its initial application, the PO shall report such failure or deviation to the city council. Thereafter, the council, which, after holding a hearing, may rescind all or part of the development allotment in favor of another the next development ~~on the list~~ which has qualified for such allotment and which is capable of commencement in the ~~fiscal~~ year for which the allotment was awarded.

### **Part 4. General Provisions**

#### **18.78.155 Duration of provisions.**

This article shall remain in effect until and including fiscal year 2019/20~~2009/2010~~.

#### **18.78.160 Compliance with state and federal laws.**

The provisions of this article shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

#### **18.78.165 Severability.**

A. If any provision or application of any provision of this article is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this article are severable and would have been enacted as

they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by enactment of this article, to extend and expand the essential residential development control provisions and policies of Measure ~~E~~ P. If this article is held invalid in its entirety, then ~~the provision of Section 4 of the ordinance codified in this article repealing Measure E shall be inoperative, and~~ Measure ~~E~~ P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of this article is held invalid, the remainder of the ordinance codified in this article shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure ~~E~~ P that correspond to the invalidated provision. ~~Thus, the repeal of Measure E, provided for in Section 4 of the ordinance codified in this article, shall be inoperative with respect to those provisions of Measure E corresponding to any invalidated provisions of the ordinance codified in this article.~~

#### **18.78.170 Unconstitutional taking of private property prohibited.**

This article shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this article to a specific project would effect a taking, then pursuant to this article the city council may alter the provisions of this article, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this article to the maximum extent feasible.

#### **18.78.175 Amendment or repeal.**

This article and the “Residential Development Control” section of the General Plan, including the amendments to the general plan and municipal code were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election.

### **Initiative Measure Section 4: General Provisions**

#### **1. Duration of provisions.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, and the “Residential Development Control” section of the General Plan, enacted by the voters, shall remain in effect through fiscal year 2019/20.

#### **2. Compliance with state and federal laws.**

The provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the “Residential Development Control” section of the General Plan shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

### **3. Severability.**

A. If any provision or application of any provision of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the “Residential Development Control” section of the General Plan is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any other provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the “Residential Development Control” section of the General Plan are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by their approval of the 2004 ballot measure amending the “Residential Development Control” section of the General Plan, and Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, to extend and expand the essential residential development control provisions and policies of Measure P. If Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the “Residential Development Control” section of the General Plan is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or any provision of the “Residential Development Control” section of the General Plan is held invalid, the remainder of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the “Residential Development Control” section of the General Plan shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

### **4. Unconstitutional taking of private property prohibited.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the “Residential Development Control” section of the General Plan shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the “Residential Development Control” section of the General Plan to a specific project would effect a taking, then the city council may alter the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and/or the “Residential Development Control” section of the General Plan, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the “Residential Development Control” section of the General Plan to the maximum extent feasible.

### **5. Amendment or repeal.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the “Residential Development Control” section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal

election. In the event of ongoing reorganizations, revisions and updates to the General Plan and Municipal Code, the policies and provisions enacted by this initiative measure shall be retained and remain in effect until their expiration or amendment or repeal by the voters.

## **6. Implementation and Consistency.**

A. Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted into the Morgan Hill General Plan (unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case Section 2 of this initiative shall be deemed inserted into the General Plan on January 1 of the following calendar year). The General Plan and the Municipal Code of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative, as of the date Section 2 is deemed inserted into the General Plan.

B. As of the date the provisions of Section 2 of this initiative are deemed inserted into the Morgan Hill General Plan, Section 3 of this initiative shall likewise be deemed inserted into the Morgan Hill Municipal Code, and Measure P as enacted by the voters of Morgan Hill in November 1990, shall be deemed amended by the terms of this initiative ordinance, as set forth in Section 2 and Section 3 of this initiative measure, and the Municipal Code shall be interpreted to give immediate effect to the initiative provisions.

C. The City Council shall within 120 days of the enactment of this initiative amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of this initiative. Also within 120 days the City Council shall amend Article II of Chapter 18.78 of the City Planning and Zoning Codes, entitled "Specific Policies," relating to the RDCS, and any other land use regulations as necessary to conform to all provisions of this initiative.

D. The development allotments distributed for fiscal years 2004/2005 through 2006/2007 awarded under Measure P shall remain in effect, except that under this initiative measure they may be supplemented based on the 2004 biennial computation of available development allotments, pursuant to section 18.78.030B. New allotments for fiscal year 2006/2007 and following shall be governed by the provisions of this initiative measure.